

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (herein after referred to as "Department") is proposing to take the action described in the Informative Digest.

A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **on or before 5:00 p.m., July 4, 2005**.

Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 32515 and 34001 of the Food and Agricultural Code, and to implement, interpret or make specific sections 32920, 32920.5, 34001.5 of said Code, the Department is considering adding section 581 to Article 19 of Chapter 1, Division 2, of Title 3 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law, Food and Agricultural Code section 34001 sets forth the requirements for pasteurizing milk and provides specific heating times and temperatures. This section also authorizes the Department of Food and Agriculture (Department) to review and approve processes of milk pasteurization that have been demonstrated to be equally efficient as those processes specified in section 34001. Food and Agricultural Code section 32515 specifies that the term "pasteurized" means that the milk or milk product has been subjected to a process that is described in Chapter 8 (commencing with section 34001), or other process which has been demonstrated to be equally efficient and has been approved by the Department.

In compliance with section 34001, et seq., the Department has in place requirements for operators of pasteurization equipment under sections 582, 583, 584, and 585 of Article 19, of Chapter 1, Division 2 of Title 3 of the California Code of Regulations. However, these requirements do not allow for the consideration of alternatives to pasteurization pursuant to sections 34001 and 32515.

Therefore, the Department is proposing to adopt new section 581 to update Article 19 of Chapter 1, Division 2 of Title 3 of the California Code of Regulations to designate the requirements for pasteurization, and allow for uniform evaluation of

pasteurization equivalency consistent with current technology and research. This proposal specifies the method for the public to submit proposals to the Department for review and determination of equivalency to authorized pasteurization technologies. This proposal will also make California consistent with federal definitions of pasteurization and ensure that California's milk regulatory program complies with the Grade "A" Pasteurized Milk Ordinance, 2003 Revision, of the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration.

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action would not result in any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. This proposal does not impose any fees, nor requires changes to existing milk and milk products plants in California. It establishes the process by which the effectiveness and safety of new and innovative pasteurization technologies may be evaluated by the Department. This proposal affects individuals and businesses choosing to apply to the Department for approval of alternatives to pasteurization as defined in Food and Agricultural Code section 34001. It imposes the following paperwork requirement upon persons or businesses engaged in the dairy industry:

- *Paperwork:* The person or business choosing to apply for pasteurization equivalency is to submit their proposal in writing to the Department. The only cost anticipated for this requirement would be the person or business incurring mailing costs to submit their proposal to the Department.

In making this determination, the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- The consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California. This proposal does not impose any fees, nor requires changes to existing milk and milk products plants in California. It establishes the process by which the effectiveness and safety of new and innovative pasteurization technologies may be evaluated by the Department.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This proposal does not impose any fees, nor requires changes to existing milk and milk products plants in California. It establishes the process by which the effectiveness and safety of new and innovative pasteurization technologies may be evaluated by the Department. This proposal affects persons or entities choosing to apply to the Department for approval of alternatives to pasteurization as defined in Food and Agricultural Code section 34001. It imposes the following paperwork requirement upon persons or entities engaged in the dairy industry:

- *Paperwork:* The person or entity choosing to apply for pasteurization equivalency is to submit their proposal in writing to the Department. The only cost anticipated for this requirement would be the person or entity incurring mailing costs to submit their proposal to the Department.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-114, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Name:	Kristen Dahl, Dairy Program Coordinator
Address:	Department of Food and Agriculture Milk and Dairy Food Safety Branch 1220 N Street, Room A-170 Sacramento, CA 95814
Telephone No.:	(916) 654-1981
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E-mail address:	KDahl@cdfa.ca.gov

The backup contact person is:

Name:	Nancy Grillo, Associate Analyst
Address:	Department of Food and Agriculture 1220 N Street, Room A-116 Sacramento, CA 95814
Telephone No.:	(916) 651-7280
Fax No.:	(916) 653-4249
E-mail address:	NGrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name:	Nancy Grillo, Associate Analyst
Address:	Department of Food and Agriculture 1220 N Street, Room A-116 Sacramento, CA 95814

Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>